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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,464	07/24/2003	Alexandre Blais	701826-054280	1325
50828	7590	09/07/2007	EXAMINER	
DAVID S. RESNICK 100 SUMMER STREET NIXON PEABODY LLP BOSTON, MA 02110-2131			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	
			MAIL DATE	DELIVERY MODE
			09/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/626,464

Applicant(s)

BLAIS, ALEXANDRE

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's arguments filed 9/29/06 have been fully considered but they are not persuasive. See discussion below. The restriction requirement dated 5/3/07 was improper since the previous examiner had examiner all of the claims in the previous office action dated 9/29/06. For this reason the restriction requirement has been withdrawn and a rejection based on Applicant's response of 9/29/06 is set-forth below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Burnham et al (US 6841515), Burnham et al (US 5853450) and Kimura (US 5093262).

Burnham teaches the production of biosolid granules for use as fertilizers (abstract).

Burnham et al teach the utility of incorporating wastewater or bioorganic sludge including microbial matter in fertilizer compositions.

Kimura teaches methods of incorporating nitrogen fixing bacillus material into dried fertilizer compositions containing conventional NPK fertilizer materials (column 6).

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One of ordinary skill in the art would be motivated to combine these references because they teach the utility of combining microbial materials into fertilizer compositions.

Thus it would have been prima facie obvious to the ordinary artisan at the time the invention was made to have made a granular fertilizer composition comprising a bacterial fermentation product because the prior art teaches solid fertilizer compositions comprising known NPK fertilizer components in combination with bacterial materials.

*Response to Applicant's argument*

The applicant argues:

The document of Burnham teaches a method of production of encapsulated and / or concentrically-constructed fertilizer for controlled or delayed release properties. Burnham teaches away from the present application since the present application is claiming a fertilizer wherein the bacteria are active immediately, i.e., readily available and without lag time.

Nowhere in Burnham is there a teaching or suggestion of method of producing a fertilizer comprising the step of mixing a granular fertilizer with a ferment comprising active bacteria, wherein bacteria are obtained from a fermentation stopped before bacteria get into a dormant stage and therefore have no lag time upon rehydration.

The present application involves cooling down the ferment prior to being mixed with the granular fertilizer.

Nowhere in Kimura is there any teaching, or even a suggestion, of a method of producing a fertilizer comprising the step of mixing a granular fertilizer with a ferment

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comprising a fermentation stopped before bacteria reach a dormant stage and thus have a lag time upon rehydration.

The examiner argues:

The Burnham reference (US '515) alone makes the instant invention obvious. Burnham (US 5853450) and Kimura (US 5093262) are withdrawn from the rejection since neither teaches fermentation stopped. Burnham (US '515) biosolids do not require encapsulation and would therefore allow the bacteria to be available in active form. Note Burnham recites that the biosolids "can be" encapsulated (encapsulation not required). See column 4 lines 61-65, column 6 lines 10-23.

Burnham (US '515) teaches a bacterial fermentation sludge that is equivalent to the bacteria being obtained from fermentation stopped before bacteria is in a dormant stage. Note the bacteria are added at lower or cool temperature to the composition. See column 5 lines 30-46.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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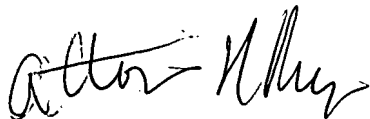
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor  
Primary Examiner  
AU 1616